

HOST COMMUNITY BENEFIT AGREEMENT
BETWEEN
MASS MEDI-SPA INC. AND
THE TOWN OF NANTUCKET, MASSACHUSETTS
FOR THE SITING OF A REGISTERED MARIJUANA DISPENSARY

This Host Community Benefit Agreement ("HCBA") is entered into this 1st day of ~~April~~ ^{June}, 2016 by and between Mass Medi-Spa, Inc., a Massachusetts not-for-profit corporation formed under MGL c.180 et seq. with a principal office address of 84 Polpis Rd. Nantucket, Massachusetts, 02554, (MMS) and the Town of Nantucket, a body politic acting by and through its Board of Selectmen, with a mailing address of 16 Broad St, Nantucket, Massachusetts 02554, ("TOWN"). The HCBA pertains to the siting of a Registered Marijuana Dispensary ("RMD"), being a facility that acquires, possesses, cultivates, manufactures, delivers, transports, supplies, sells, and/or dispenses marijuana, in the Town of Nantucket.

WHEREAS, MMS has applied to the Massachusetts Department of Public Health ("DPH") for a license to operate a RMD in the TOWN (the "DPH License"),

WHEREAS, MMS wishes to locate a RMD in the TOWN in accordance with regulations issued by the DPH and the TOWN,

WHEREAS, it is the intention of MMS that its RMD may engage in the cultivation, processing, and sales of marijuana for medical purposes, and other related activities as may be permitted by the DPH, and for those purposes may operate the RMD in a single facility in the TOWN; and

WHEREAS, MMS intends to provide certain benefits to the TOWN in the event that it obtains the DPH License and all required state and local approvals to operate an RMD in the TOWN, and does so operate, and

WHEREAS, the TOWN has agreed to issue a Letter of Non-opposition or Support regarding MMS's application for the DPH License.

THEREFORE, in consideration of the above, MMS and the TOWN enter into this HCBA in accordance with MGL 44, s53A, on the following terms:

1. MMS agrees to make a donation to the TOWN, in the amounts and under the terms provided herein in Paragraph 2 (the "Donation"). The Treasurer of the TOWN shall hold the Donation in a separate gift account, to be expended by the Board of Selectmen without further appropriation pursuant to G.L. c.44, §53A, for the purposes of addressing the potential health, safety, and other effects or impacts of the RMD on the TOWN and on municipal programs, services, personnel, and facilities. The Donation shall be used at the TOWN's sole discretion, as determined by the Board of Selectmen.

2. MMS shall pay to the TOWN the following sums annually as the Donation:

- (a) Within thirty days after the end of each calendar year in which MMS operates a RMD in Nantucket, MMS shall donate to the TOWN the sum of 10 cents per gram of dried marijuana flower sold plus 10 cents per unit of Marijuana Infused Products (MIP) sold during said calendar year. MMS shall provide substantiation for the donation, including but not limited to any data, reports or audits provided to DPH related to such sales, and shall authorize the release of any investigation or audit of such numbers to the Town.
- (b) The minimum donation shall be \$20,000; the maximum donation shall be \$300,000.
- (c) After each five calendar years of operation of an RMD in Nantucket, the minimum donation for the next five calendar years shall be adjusted to be the average of the three highest donations due to the Town in the prior five years under the above formula.

3. In the event that MMS enters into a community benefit agreement with another municipality in the Commonwealth of Massachusetts that contains financial terms that are superior to what MMS agrees to provide the TOWN pursuant to this HCBA, then the parties shall reopen this HCBA and negotiate an amendment resulting in financial benefits to the TOWN equivalent or superior to those provided to the other municipality. The parties recognize that the minimum payment or percentage of donation may reflect the size of each community and agree that a community benefit agreement is not superior strictly based on one factor, but must be considered in the aggregate and in consideration of the relevant market size and other factors, such as costs and seasons.

4. In the event that the TOWN enters into a community benefit agreement with another RMD or RMD applicant, or in the event that there is a material change in the law regarding Marijuana, then the parties shall reopen this HCBA and negotiate an amendment, to reflect the potential effect on the revenues of MMS and/or to reflect a fairness in the market compared to MMS's competitors.

5. While the purpose of the Donation is to assist the TOWN in addressing any public health, safety and other effects or impacts that the RMD may have on the TOWN, the TOWN may expend the Donation at its sole and absolute discretion.

6. The provisions of this HCBA shall be applicable as long as MMS operates an RMD in the TOWN, pursuant to the DPH License, subject to the provisions of Paragraph 11, below, and Paragraph 4, above.

7. MMS agrees that the RMD will not produce or sell items that resemble or are in the form of candy, such as lollipops, "gummi bears," jelly beans, or similar products.

8. MMS agrees to provide staff to participate in TOWN-sponsored educational programs on public health and substance abuse prevention, and to work cooperatively with TOWN's Public Safety departments.

9. This HCBA shall terminate at the time that any of the following occurs:

- (a) The TOWN notifies MMS of the TOWN'S termination of this HCBA for JUST CAUSE [Just Cause shall be defined as MMS purposefully or negligently violating any laws of the Commonwealth with respect to the operation of the RMD, and such violation remains uncured for 90 days; or, if MMS fails to make payment to the TOWN as required under this HCBA, and such failure remains uncured for 90 days]; or,
- (b) MMS ceases to operate a RMD in the TOWN.

10. This HCBA does not affect, limit, or control the authority of TOWN boards, commissions, and departments to carry out their respective powers and duties to decide upon and to issue, or deny, applicable permits and other approvals under the statutes and regulations of the Commonwealth, the General and Zoning Bylaws of the TOWN, or applicable regulations of those boards, commissions, and departments, or to enforce said statutes, Bylaws, and regulations. The TOWN, by entering into this HCBA, is not thereby required or obligated to issue such permits and approvals as may be necessary for the RMD to operate in the TOWN, or to refrain from enforcement action against MMS and/or its RMD for violation of the terms of said permits and approvals or said statutes, Bylaws, and regulations.

11. This HCBA applies solely to the operations of the RMD in accordance with the DPH License. If, during the term of this HCBA, it becomes permissible under Massachusetts law for MMS to sell or distribute marijuana at the RMD for purposes other than those initially authorized by the DPH License, the parties shall renegotiate the terms of this HCBA, including (but not limited to) increasing the amount of the payments to be made to the TOWN, in recognition that the additional purposes of the RMD may have greater impacts and effects on the TOWN, with an understanding that any such renegotiation will need to comply with Massachusetts law. In no case shall the payments be reduced from the amounts specified in Paragraph 2 of this HCBA unless necessary to comply with rules enacted or amended by the Commonwealth of Massachusetts, or unless the parties amend the HCBA, as provided herein.

12. MMS shall not assign, sublet or otherwise transfer this HCBA, in whole or in part, without the prior written consent of the TOWN, and shall not assign any of the monies payable under this HCBA, except by and with the written consent of the TOWN.

13. MMS agrees to comply with all laws, rules, regulations and orders applicable to the RMD, such provisions being incorporated herein by reference, and shall

be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such work. MMS agrees not to assert or seek exemption as an agricultural use under the provisions of G.L. c.40A, §3 from the requirements of the TOWN's Zoning Bylaws.

14. MMS commits that all real property taxes (including real property taxes, personal property taxes, land fill fees, and municipal betterments) owing for the property used for the RMD will be paid when due. MMS further commits that it shall not apply for a reduction or elimination of real property taxes based on MMS's not-for-profit status or that in the alternative MMS agrees that it will pay to the TOWN a payment in lieu of taxes (PILOT) equal to any real property or other taxes or fees not due to the TOWN based on the assertion of MMS's non-profit status.

15. This HCBA is binding upon the parties hereto, their successors, assigns and legal representatives.

16. Any and all notices, or other communications required or permitted under this HCBA shall be in writing and delivered postage prepaid mail, return receipt requested; by hand; by registered or certified mail; or by other reputable delivery services, to the parties at the addresses set forth on Page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notices or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.

17. If any term or condition of this HCBA or any application thereof shall to any extent be held invalid, illegal or unenforceable by any court or competent jurisdiction, then the validity, legality, and enforceability of the remaining terms and conditions of this HCBA shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

18. This HCBA shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and MMS submits to the jurisdiction of any of its appropriated courts for the adjudication of disputes arising out of this HCBA.

19. This HCBA, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This HCBA supersedes all prior agreements, negotiation and representations, either written or oral and it shall not be modified or amended except by a written document executed by the parties hereto.

20. This HCBA shall also be null and void in the event that MMS shall not locate an RMD in the TOWN or shall relocate such RMD out of the TOWN. In the case of any relocation out of the TOWN, an adjustment of funds due to the TOWN hereunder shall be calculated based upon the period of occupation of the RMD within the TOWN,

but in no event shall the TOWN be responsible for the return of any funds already provided to it by MMS.

21. The obligations of MMS and the TOWN recited herein are specifically contingent upon the following:

- (a) Upon MMS obtaining the DPH License for operation of an RMD in the TOWN,
- (b) Upon MMS obtaining any and all local permits and approvals necessary for construction and operation of an RMD in the TOWN, and
- (c) Upon MMS constructing and operating an RMD in the TOWN.

Executed on the date first above.

MASS MEDI-SPA INC.,

By: 

JEFFREY C. ROOS, as President

**TOWN OF NANTUCKET,
BY: ITS BOARD OF SELECTMEN**


James R. Kelly, Chairman


Dawn E. Hill Holdgate, Vice Chairman


Rick Atherton


Robert DeCosta


Matthew Fee

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